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OFFICE OF PETITIONS

In re Application of :
Dah-Ben Liang et al. : DECISION ON PETITION
Application No. 09/637,764 :
Filed: August 10, 2000 :
Atty Docket No. 36912/CM/S61 :
:

This is a decision on the petition filed on May 3, 2010, which is being treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.175 where it requires that a supplemental declaration be executed by a named inventor.¹

The petition is **GRANTED**.

BACKGROUND

1. On November 5, 2008, a petition under 37 CFR 1.183 was filed and granted on October 29, 2009. Petitioners assert that joint inventor Zhigang Fang has refused to sign the substitute declaration.
2. On May 3, 2010, the present petition was filed which is being treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.175 where it requires that a supplemental declaration be executed by a named inventor.

DECISION ON PETITION UNDER 37 CFR 1.183
TO WAIVE §§ 1.67 AND 1.175

Petitioners state that joint inventor Jiinjen Albert Sue has refused to sign the substitute reissue declaration. Specifically, it is asserted that Jiinjen Albert Sue has failed to sign and return the substitute reissue declaration.

Counsel's patent administrator, Inez Cameron, states that,

¹ Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal to also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

"2. On January 29, 2010, I received a communication from our Patent Attorney, Constantine "Gus" Marantidis, providing a copy of a response to the Office action mailed on November 3, 2010 (the "Response") that issued on the above-referenced reissue application, as well as copies of a Substitute Declaration for Reissue Patent Application to be signed by the joint inventors.

3. Soon thereafter, I forwarded a copy of a Substitute Declaration for Reissue Patent Application ("Substitute Declaration"), along with the Response to joint inventor, Jiinjen Albert Sue (also known as Albert Sue) by certified mail return receipt requested. A true and accurate copy of the Substitute Declaration forwarded to Mr. Sue is attached hereto in Appendix A.

4. A true and accurate copy of the certified mail receipt noting that Mr. Sue received the Response and Substitute Declaration on February 5, 2010 is attached hereto in Appendix B.

5. Having not heard back from Mr. Sue on April 27, 2010, I sent Mr. Sue another copy of the Response and Substitute Declaration.

6. To this date, I have not received a copy of the signed Substitute Declaration from Mr. Sue."

In view of the efforts recounted to obtain the signature of Jiinjen Albert Sue on the substitute declaration in compliance with 37 CFR 1.175, and the apparent refusal to sign, it is agreed that justice would be served by waiving the requirement for the signature of joint inventor Jiinjen Albert Sue on the substitute declaration filed on May 3, 2010.

CONCLUSION

1. The petition is granted.

2. Jurisdiction over the application is being forwarded to Technology Center Art Unit 3672 for further processing.

3. Telephone inquiries related to this decision should be directed to Irvin Dingle at (571) 272-3210.

4. Inquiries regarding petition status or general petition information are handled by the Office of Petitions staff at (571) 272-3282.

/dab/
David Bucci
Petitions Examiner
Office of Petitions